

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Docket #04-11277-GAO

CHESTER J. CHALUPOWSKI, Jr. et al.  
Plaintiffs

v.

JANIS M. BERRY, INDIVIDUALLY  
AND IN HER OFFICIAL CAPACITY  
AS ASSOCIATE JUSTICE OF THE  
APPEALS COURT OF MASSACHUSETTS  
Defendant

PLAINTIFFS' MOTION TO REMOVE DEFAULT JUDGMENT  
ISSUED BY THIS COURT ON SEPTEMBER 10, 2004 (O'TOOL, J.)  
PURSUANT TO RULE 60 (b) (6) OF FEDERAL RULES OF CIVIL  
PROCEDURE

Now come Chester and Malgorzata Chalupowski, the  
Plaintiffs in the above captioned matter, and move this  
Honorable Court to remove default judgment entered by this  
Court on September 10, 2004. As reasons for their motion  
Plaintiffs state as follows:

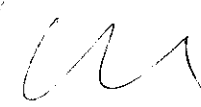
1. Plaintiffs filed the above captioned complaint with  
this Court on June 8, 2004.
2. Plaintiffs served their Complaint on the Defendant and  
the Office of Attorney General of the Commonwealth of  
Massachusetts on September 9, 2004. True and accurate  
copies of Return of Service are attached hereto as  
Exhibits 1 and 2.

3. Plaintiffs did not receive Defendant's response within 20 days after service as required by statute.
4. On October 29, 2004, Plaintiffs filed their motion asking the court to enter a default judgment against the Defendant due to Defendant's failure to respond to the Complaint in a timely manner, as required by Rule 12 (1) (A) of federal Rules of Civil Procedure.
5. On November 23, 2004, Plaintiffs received a copy of a Notice of Electronic Filing, indicating that their complaint was dismissed on September 10, 2004 - which is one day after the Complaint was served on the Defendant.
6. While reviewing the case file at the U.S. District Court Clerks Office, Plaintiffs discovered a copy of Defendant's response to their Complaint dated August 4, 2004 - almost a month before the complaint was actually served on the Defendant.
7. Plaintiffs were never provided a copy of Defendant's response, nor did they ever expect to receive any response before they served their Complaint on the Defendant on September 9, 2004.
8. Plaintiffs are puzzled by the chronology of events related to their complaint.


9. Therefore, the Plaintiffs respectfully request this court vacate the judgment of dismissal entered on September 10, 2004, to allow Plaintiffs to try their case on its merits.

10. Plaintiffs respectfully request a hearing on their instant motion.

Respectfully submitted Pro Se



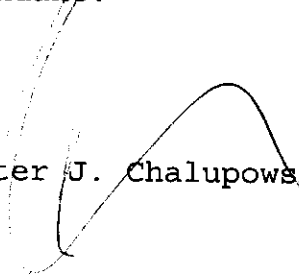
Chester J. Chalupowski, Jr.  
119 Water Street, #65  
Beverly, MA 01915  
(978) 921 4945



Malgorzata Chalupowski

#### Certificate of Service

We, Chester and Malgorzata Chalupowski, hereby certify that on this date a true copy of the foregoing motion was served via first class mail postage prepaid and registered mail, returned receipt requested, on attorney of record for the Defendant.



Chester J. Chalupowski, Jr.



Malgorzata Chalupowski

Dated: January 7, 2005

## **EXHIBIT 1**

# UNITED STATES DISTRICT COURT

Chester J. Chalupowski, Jr. Individually and as  
Trustee and Beneficiary of the Chalupowski Family  
Trust and 26-30 Andrew Street Trust  
& Malgorzata B. Nabialczyk  
V. PLAINTIFFS

District of MASSACHUSETTS

## SUMMONS IN A CIVIL CASE

Janis M. Berry, Individually and in her  
Official Capacity as Associate Justice  
of the Appeals Court of Massachusetts

DEFENDANT CASE NUMBER:

**04 - 11277 GAO**

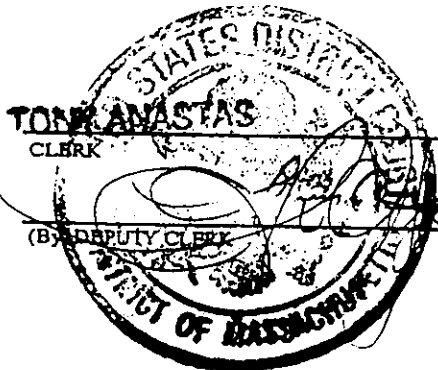
TO: (Name and address of Defendant)

Janis M. Berry, Associate Justice  
Appeals Court  
Clerk's Office  
Three Center Plaza, Seventh Floor  
Boston, MA 02108

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Chester J. Chalupowski, Jr., Pro Se  
Malgorzata B. Nabialczyk, Pro Se  
119 Water Street, #65  
Beverly, MA 01915

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.



6-9-04  
DATE

| RETURN OF SERVICE   |                           |                  |
|---|---------------------------|------------------|
| Service of the Summons and complaint was made by me <sup>(1)</sup>  | DATE<br>SEPTEMBER 9, 2004 |                  |
| NAME OF SERVER (PRINT)<br>BARBARA L. BEDUGNIS   | TITLE<br>CONSTABLE        |                  |
| Check one box below to indicate appropriate method of service   |                           |                  |
| <input checked="" type="checkbox"/> Served personally upon the defendant. Place where served: <u>THREE CENTER PLAZA, 7th FLOOR, BOSTON, MA.</u>   |                           |                  |
| <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.<br>Name of person with whom the summons and complaint were left: _____   |                           |                  |
| <input type="checkbox"/> Returned unexecuted: _____   |                           |                  |
| <input type="checkbox"/> Other (specify): _____   |                           |                  |
| STATEMENT OF SERVICE FEES   |                           |                  |
| TRAVEL<br>\$11.00   | SERVICES<br>\$25.00       | TOTAL<br>\$36.00 |
| DECLARATION OF SERVER   |                           |                  |
| <p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on <u>SEPTEMBER 9, 2004</u><br/>Date</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 40%;"> <p><i>Barbara L. Bedugnis</i><br/>Signature of Server</p> <p>BARBARA L. BEDUGNIS, CONSTABLE<br/>%ROSCOE, BEDUGNIS &amp; ASSOCIATES<br/>15 COURT SQUARE, SUITE 450<br/>BOSTON, MASSACHUSETTS 02108<br/>Address of Server</p> </div> <div style="width: 55%; text-align: right;"> <p>APPEALS COURT<br/>CLERK'S OFFICE<br/>THREE CENTER PLAZA<br/>SEVENTH FLOOR<br/>BOSTON<br/>MA 02108<br/>9/9</p> </div> </div> |                           |                  |

JANIS M. BERRY, Assoc. Justice

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

## **EXHIBIT 2**

## UNITED STATES DISTRICT COURT

Chester J. Chalupowski, Jr. Individually and as  
Trustee and Beneficiary of the Chalupowski Family  
Trust and 26-30 Andrew Street Trust  
& Malgorzata B. Nabialczyk

PLAINTIFFS

District of

MASSACHUSETTS

V.

## SUMMONS IN A CIVIL CASE

Janis M. Berry, Individually and in her  
Official Capacity as Associate Justice  
of the Appeals Court of Massachusetts

DEFENDANT

CASE NUMBER:

04 - 11277 GAO

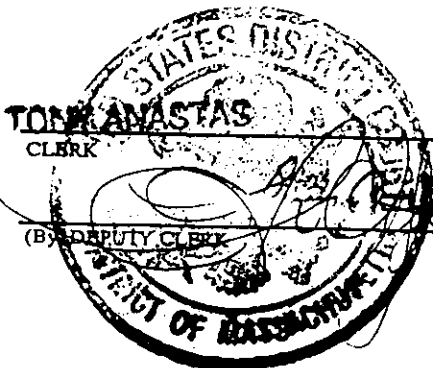
TO: (Name and address of Defendant)

Janis M. Berry, Associate Justice  
Appeals Court  
Clerk's Office  
Three Center Plaza, Seventh Floor  
Boston, MA 02108

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Chester J. Chalupowski, Jr., Pro Se  
Malgorzata B. Nabialczyk, Pro Se  
119 Water Street, #65  
Beverly, MA 01915

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.



6-9-04

DATE



RETURN OF SERVICE

|  |                           |
|--|---------------------------|
| Service of the Summons and complaint was made by me <sup>(1)</sup> | DATE<br>SEPTEMBER 9, 2004 |
| NAME OF SERVER (PRINT)<br>BARBARA L. BEDUGNIS                      | TITLE<br>CONSTABLE        |

Check one box below to indicate appropriate method of service

☐ Served personally upon the defendant. Place where served: ONE ASHBURTON PLACE, BOSTON, MA.

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: \_\_\_\_\_

☐ Returned unexecuted: \_\_\_\_\_

☒ Other (specify): ACCEPTED IN HAND BY TIMOTHY LEBLANC, SUPPORT SERVICES, AT ATTORNEY GENERAL'S OFFICE, ONE ASHBURTON PLACE, BOSTON, MASSACHUSETTS.

STATEMENT OF SERVICE FEES

|                   |                     |                  |
|-------------------|---------------------|------------------|
| TRAVEL<br>\$11.00 | SERVICES<br>\$25.00 | TOTAL<br>\$36.00 |
|-------------------|---------------------|------------------|

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on SEPTEMBER 9, 2004  
Date

*Barbara L. Bedugnis*  
 Signature of Server  
 BARBARA L. BEDUGNIS, CONSTABLE  
 %ROSCOE, BEDUGNIS & ASSOCIATES  
 15 COURT SQUARE, SUITE 450  
 BOSTON, MASSACHUSETTS 02108  
 Address of Server

ATTORNEY GENERAL  
 ONE ASHBURTON PLACE  
 BOSTON, MA 02113  
 617.727-2200  
 Timothy LeBlanc  
 Support Services  
 9/9/04

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.